

Contract # 069085

004676

STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES:** This contract is between the following agency of the State of Utah: Department of Transportation Agency Code: 810 Traffic Management, Division referred to as (STATE), and the following CONTRACTOR:

USERTrust
Name

265 East 100 South
Address

Salt Lake City
City

UT
State

84111
Zip

Contact Person Nicholas Hales
Federal Tax ID# 8705669446

Phone (801)-363-9748
Vendor # 93945A

Email nick@usertrust.com
Commodity Code # 92002000000

LEGAL STATUS CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide: Service to facilitate the security and storage of electronic bids received from construction contractors bidding on transportation project (hereafter referred to as construction contractors) to be electronically downloaded to UDOT's PDBS system for processing, at the appointed bid opening time.
3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on **DRG017 (1)**, FY06 Bid# DM001.
4. **CONTRACT PERIOD:** Effective date **01 December 2005** Termination date **30 November 2008** unless terminated early or extended in accordance with the terms and conditions of this contract. 1 (1) year renewal options.
5. **CONTRACT COSTS:** CONTRACTOR will be paid a maximum of **\$22,500.00** for costs authorized by this contract.
6. **ATTACHMENT A:** Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work
ATTACHMENT C: Special Terms and Conditions
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #DM001 dated 10/20/05.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Contractor's signature

Date

Nicholas E. Hales, *President*
Type or Print Name and Title

STATE

Kelvin G. Thacker, Procurement Services Manager Date

CONTRACT RECEIVED AND
PROCESSED BY
DIVISION OF FINANCE

Director, Division of Finance

JAN 31 2006

Date

Denice McCarthy
Agency Contact Person

(801) 965- 4761
Telephone Number

(801) 965-4073
Fax Number

dmccarthy@utah.gov
Email Address

(Revision 08/26/2003)

REC'D FEB 06 2006

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NON APPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Additional Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: July 5, 2005)

ATTACHMENT B SCOPE OF WORK

The purpose for this contract is for data repository services for the UDOT. The Contractor will provide secure, Bid and Repository Services, including Authenticated Digital Certificate Services, Web Page, and Application to interface with STATE Contractor Electronic Bidding Services (CEBS) within the Project Development Business System (PDBS).

The service shall be to facilitate the security and storage of electronic bids received from construction contractors bidding on transportation project (hereafter referred to as construction contractors) to be electronically downloaded to UDOT's PDBS system for processing, at the appointed bid opening time. This service is to be accomplished based on the following:

1. Certificate Purchase

- 1.1. Provide a simple process for CONTRACTOR certificate purchase by the construction contractors.
- 1.2. Certificate must be authenticated. The authentication process for the contractor will be as follows:
 - 1.2.1. Fill out a certificate application form available on the CONTRACTOR website.
 - 1.2.2. Print the application form.
 - 1.2.3. Sign and date the form in the presence of a notary public in order to have the signer identified and the signature and date validated by the notary.
 - 1.2.4. Mail or deliver the original notarized document to CONTRACTOR.
 - 1.2.5. Within one working day (24 hours) after CONTRACTOR receives the notarized application, an email will be sent to the address provided on the application form, indicating the certification is available for download.
 - 1.2.6. Applicant will download and install the certificate on the computer to be used for creating and uploading their electronic bids.
- 1.3. If more than one computer will be used by the same applicants an additional Certificate may be purchased and downloaded on a second computer.
- 1.4. Cost to issue the certificate to the contractor will be, \$ 15.00. A new Certificate must be purchased annually.
- 1.5. Time frame to complete a certificate purchase:
 - 1.5.1. See 1.2.5 above.

2. Repository Access setup

- 2.1. Provide a simple process for the contractor.
- 2.2. Setup fee to the contract will be \$ 10.00. New setup is required for each certification issued.
- 2.3. Time frame to complete setup:
 - 2.3.1. CONTRACTOR certificates are automatically set up as part of the download process (see item 1.2.6 above).

3. Contractor Upload

- 3.1. The following changes to STATE CEBS/PC will facilitate the bid upload:
 - 3.1.1. A 'SUBMIT BID' button on the STATE CEBS/PC application window will:
 - 3.1.1.1. Launch Internet Explorer
 - 3.1.1.2. Navigate to a specific URL web page provided by CONTRACTOR and residing on the CONTRACTOR Server.
- 3.2. The contractor must use the Internet Explore web browser to submit bids to CONTRACTORS' vault.

- 3.3. If more than one Certificate is installed on the contractor's PC, a popup window will list the certificates so that the contractor may choose.
- 3.4. The CONTRACTOR shall provide secure access to the vault access. The contractor will not be able to logon to the data repository if the access is not previously established. The contractor will receive a FAILURE notice if he cannot access the vault.
- 3.5. Bid upload functions will be provided by CONTRACTOR in a COMPUTER component embedded in the CONTRACTOR web page. CONTRACTOR functions provide:
 - 3.5.1. Validate the digital certificate used by the contractor. The contractor will receive a FAILURE notice if the certificate is invalid.
 - 3.5.2. If logon is successful, the contractor will be shown a list of his previously submitted bids that have not been archived according to the rules set forth in Section 6.
 - 3.5.3. When the contractor uses the "Upload New Bid" button on the web page, he must then select the bid file on his PC that is to be uploaded to the vault.
 - 3.5.4. The bid will be digitally signed with the certificate.
 - 3.5.5. Upon completion of the bid upload, the bid will be time stamped and locked by the CONTRACTOR server. All times will be in GMT on the server, but converted for display purposes to MST on the web page.
 - 3.5.6. The contractor will receive a SUCCESS notice when the bid upload was successfully completed. The notice will include the date and time the bid was signed and time stamped by the CONTRACTOR server. This time will act as the official submittal time.
 - 3.5.7. ALL notices from CONTRACTOR regarding success or failure of bids received will be shown on the web page and also emailed to the contractor at the email address provided on the digital certificate application.
- 3.6. Many bids may be submitted at the last minute on bid closing day. Allow for the possibility of 50-100 concurrent contractors logged on or logging on and submitting bids simultaneously at bid closing time.
- 3.7. If the transmission is interrupted during bid submission, none of the bid will be received.
- 3.8. If the construction contractors bid upload transmission begins before the 2:00 bid open time, but does not complete until after the 2:00 bid open time, the bid will not be considered in the bid evaluation.
- 3.9. No limit on the number of bids the contractor may submit on a project. Only the last bid received prior to the 2:00 PM closing time will be downloaded to the STATE PDBS system.
- 3.10. There is no cost to the contractor to sign or submit a bid.
- 3.11. Bids uploaded to the repository will be encrypted data files.

4. STATE Download from CONTRACTOR Repository

- 4.1. A download script will run behind a 'DOWNLOAD PROJECT BIDS' button on the EBS/STATE application window. The script will supply the project numbers with the download request to CONTRACTOR.
- 4.2. The download script will contain the path of the download directory. This will allow for a possible change in the directory location at STATE and not require reprogramming of the download processing at CONTRACTOR.
- 4.3. CONTRACTOR will ensure the following rules are enforced when a download request is made from STATE:

- 4.3.1 Bids can be not be downloaded by STATE prior to 2:00 MST on bid open day.
- 4.3.2 Bids received after 2:00 on bid open day cannot be downloaded by STATE.
- 4.3.3 If the same contractor submits multiple bids on a project, only the most current bid received prior to 2:00 MST will be downloaded by the STATE.
- 4.3.4 All bids received from CONTRACTOR must be signed with an authenticated digital signature validated by CONTRACTOR at the time the bid is uploaded.
- 4.3.5 Encrypted bid file received from construction contractor will be submitted to STATE as originally received from construction contractor.
- 4.4. An unsigned copy of the signed bid file will be downloaded to STATE. The original signed bid file will be retained by CONTRACTOR as evidence in any possible legal disputes along with the ability to validate the signature.
- 4.5 Each bid file will contain the following information in the name of the file:
 - 4.5.1 STATE Project number
 - 4.5.2 Contractor ID number
 - 4.5.3 Bid open date (format ccyyymmdd). The bid open date will be used to facilitate 4.5.1, 4.5.2 and 4.5.3 above.
- 4.6 CONTRACTOR will provide to STATE written documentation for possible errors in the download process and required actions for each error.

5. Security/Repository Bid Viewing

- 5.1. STATE may not open any bids files in the repository - EVER.
- 5.2. STATE may not download any bid prior to the bid open date and time-EVER.
- 5.3. Contractor may view a list of only his own bids.
- 5.4. Contractor may not delete, open or modify any bid in the repository.
- 5.5. Contractor may view an online list of bids submitted that will show the project number as well as the other information currently provided on the line bid line such as the time of bid receipt, digital signature icon.
- 5.6. All actions by the contractors, STATE and CONTRACTOR are retained in an audit file.

6. Data Storage/Bid File Archiving

- 6.1. Bids will be archived 7 days after bid opening day.
- 6.2. If multiple project/contractor submissions exist prior to bid open date/time archive only the most current bid prior to bid open time.
- 6.3. Archive all project bids received after the bid open time.
- 6.4. Cost of bid storage will be \$.20.00 per project per year to STATE.
- 6.5. Expected storage time in archive is currently three years.
- 6.6. Provide STATE each month with a report of bids reaching the 3- year archive date.
- 6.7. All audit logs will be retained during the archived storage time.
- 6.8. When archived bids are received by STATE, all audit logs for the bids received will be provided along with the bids.

7. Issue Resolution

- 7.1. CONTRACTOR HELP desk personnel are accessible at bid open time each week.
- 7.2. Bid openings are Tuesdays at 2:00 MST each week or Thursday if Monday is a

holiday.

- 7.3. STATE will inform CONTRACTOR in advance when a Tuesday will not be a bid open day.

8. Audit Trail Dispute Evidence

- 8.1. Provide to STATE an example of all audit reports available as legal evidence.
- 8.2. Provide a list of all legal issues that can be supported with the audited information provided by CONTRACTOR.

9. Test Environment

- 9.1. CONTRACTOR will provide a URL for testing the bid submission process to be used as STATE trains and sets up new contractors for implementation and in future testing of changes to the EBS application bid submission process.
- 9.2. After initial implementation, all changes made by CONTRACTOR to the upload or download process will have to be tested with STATE prior to release.

Attachment C Special Terms & Conditions

1. **INVOICING:** CONTRACTOR shall submit invoices to STATE Project Manager,

Michelle Verucchi, Project Manager
Information Systems Services
Utah Department of Transportation
Box 140100
Salt Lake City, Utah 841 14-0100

The contract number shall appear on all invoices and correspondence.
Upon approval of the invoice, payments will be processed. STATE will remit payment by mail.

2. **PRICE GUARANTEES:** The CONTRACTOR agrees the prices bid on services in this contract shall be guaranteed through the term of the contract.
3. **NOTIFICATION:** Notice given under this Contract shall be written, or sent by facsimile or other electronic means. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Facsimile or other electronic notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

If to CONTRACTOR:

USERTrust
ATT: Nicolas Hales
265 East 100 South
Salt Lake City, UT 84111
nick@usertrust.com

with copies to:

If to STATE:

Utah Department of Transportation
ATT: Michelle Verucchi
Box: 140100
4501 South 2700 West
Salt Lake City, UT 84114-0100
Mverucchi@utah.gov

With copies to:

Utah Department of Transportation
ATT: Denice McCarthy
Box: 148260
4501 South 2700 West
Salt Lake City, UT 84114 -8260
Dmccarthy@utah.gov

4. **CHANGE IN PERSONNEL OR RESOURCES:** No change in personnel or resources assigned to this contract will be permitted without prior written approval of STATE.
5. **RESPONSIBILITY FOR WAGES:** The CONTRACTOR is responsible for all applicable company wages in accordance with the federal, state and local laws and ordinances.

6. **EMPLOYMENT OF STATE EMPLOYEES:** The CONTRACTOR agrees not to engage in any way the services on this contract of any present or former STATE employee who was involved as a decision maker in the selection or approval process or who negotiated and/or approved billings or contract modification for this contract.

7. **NON-COMPETE AGREEMENT:** The CONTRACTOR represents that its officers and employees are free to contract with the STATE and are not subject to restrictions by the terms of their present or past employment including, but not

limited to, an agreement not to compete for a period of time, unless disclosure has been made. CONTRACTOR must disclose to the STATE any possible conflicts, in writing, before the contract is signed, and the STATE will evaluate whether to continue with contract execution. The STATE may elect to terminate a contract immediately with CONTRACTOR who is subsequently determined to be subject to such restrictions, without liability to the STATE.

If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.

8. **CONFIDENTIAL INFORMATION:** To the extent work under this contract requires, the CONTRACTOR may be given access to confidential or proprietary business, technical, or financial information belonging to the STATE. The CONTRACTOR shall, after receipt thereof, treat such information as confidential. Both parties shall maintain, as confidential, and shall not disclose to any person outside its employ, nor use for purposes other than performance of this Contract, any specifications, drawings, blueprints, data, business information, or other confidential information which is learned by virtue of this Contract, except where required by law. CONTRACTOR agrees not to appropriate such information to their own use or disclose such information to other parties unless specifically authorized by the STATE in writing. The foregoing obligations, however, shall not apply to:

- a. Information which at the time of receipt by the CONTRACTOR, is in public domain.
- b. Information which is published after receipt by the CONTRACTOR, or otherwise, becomes part of the public domain through no fault of the CONTRACTOR.
- c. Information which the CONTRACTOR can demonstrate, was already in its possession at the time of receipt, and was not acquired directly or indirectly from the STATE.
- d. Information which the CONTRACTOR can demonstrate, was received from a third party who did not require the CONTRACTOR to hold such information in confidence.

9. **QUALITY OF SERVICES:** CONTRACTOR represents to STATE that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.

No changes in the services to be provided by CONTRACTOR under this contract shall be made without STATE'S prior written approval.

10. **INTELLECTUAL PROPERTY INDEMNITY:** Upon STATE written notification to CONTRACTOR, CONTRACTOR shall defend, at its expense, any claim against STATE alleging the Services, or any part thereof, infringe on any patent, copyright, trademark, trade secret, mask work, or other intellectual property interest in any country, and shall pay all costs and damages awarded. If an injunction against STATE use, sale, lease, license, other distribution of the Services or Product, or any part thereof, results from such a claim (or, if STATE reasonably believes such an injunction is likely), CONTRACTOR shall, at its expense, (and in addition to the CONTRACTOR other obligations hereunder) and as STATE requests, obtain for STATE the right to continue using, selling, leasing, licensing, or otherwise non-infringing but functionally equivalent. The provisions of this section shall not apply to any claim for infringement resulting solely from CONTRACTOR compliance with STATE detailed design specifications, where provided.
11. **ASSIGNMENT OF CONTRACT:** The CONTRACTOR shall not sublet, assign or transfer any part of this contract without prior written approval from STATE. Neither shall the provision of monies due under this contract be assignable without prior written approval of STATE.
12. **NON-PERFORMANCE:** If, at any time, CONTRACTOR fails to demonstrate the required expertise (as represented in the CONTRACTOR proposal) or fails to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace individual(s) with a competent individual(s). The STATE Project Manager must approve this replacement. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Project Manager, this contract may be canceled immediately. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR
13. **TERMINATION:** The occurrence of any of the following constitutes a breach by CONTRACTOR unless corrected by CONTRACTOR within two (2) weeks.

CONTRACTOR failure to perform services/and or deliver product on time.

Services performed and/or product delivered by CONTRACTOR does not conform to the terms set forth in this Contract.

CONTRACTOR fails to perform any material provision of this Contract.

CONTRACTOR assigns this Contract, or any obligation or rights hereunder. (The term "assign" to include, without limitation, a transfer of majority.)

CONTRACTOR sells or merges with a third-party (not a parent or subsidiary company) Without the prior written consent of STATE.

CONTRACTOR becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of CONTRACTOR'S assets.

CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within two (2) weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails

to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR thereafter except for payment of any balance due for conforming services performed prior to the date of STATE notice to cure. STATE may, at its option and without regard to CONTRACTOR ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR

14. **TERMINATION FOR OTHER THAN NON-PERFORMANCE:** If the STATE terminates for reasons other than non-performance, the CONTRACTOR is relieved of performance responsibilities for the contract.
15. **FORUM FOR ENFORCEMENT:** Any controversy or claim arising out of, in connection with, or relating to this Contract or a breach thereof shall be settled by arbitration under the arbitration rules of the American Arbitration Association, Utah Board. The Statutes of the State of Utah shall govern the arbitration proceeding and the proceeding shall be held in Salt Lake City, Utah. Anything to the contrary contained in the above mentioned rules and statutes notwithstanding, the parties consent that any papers, notices, or process necessary or proper for the institution or continuance of, or relating to any arbitration proceeding, or for the confirmation of an award and entry of judgment on any award made, including appeals in connection with any judgment or award, may be served on each of the parties by registered mail addressed to the party at the principal office of the party or by personal service on the party in or without the above mentioned state. The parties hereby recognize and consent to the above mentioned arbitration association's jurisdiction over each and every one of them.
16. **DISPUTES:** Any dispute arising under this Contract, which is not resolved, by the STATE and CONTRACTOR shall be decided by a court of law under the terms of Section 6.27.